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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PHOTOGRAPHIC ILLUSTRATORS CORPORATION, Plaintiff, v. INTERNATIONAL LIGHTING CORP. D/B/A INTERLIGHT, Defendant.	))))))))))	CIVIL ACTION NO.: 1:14-cv-14256

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OF INTERLIGHT

International Lighting Corp., d/b/a Interlight (“Interlight), submits its Memorandum of Law in Support of its Motion to Dismiss Count III of the Complaint pursuant to F.R.C.P. 12(b)(6).

I. BACKGROUND

International Lighting Corp. (”Interlight”) is a small company based in Hammond, Indiana with 8 full-time employees. Photographic Illustrators Corporation (“PIC”) is a Massachusetts corporation owned by Paul Picone, a commercial photographer. Mr. Picone worked as a photographer for Osram Sylvania, where he photographed products that Osram Sylvania offered for sale. Osram licensed and directed its distributors to use those images, and others, in the course of its business. Interlight is the latest in a long line of, *at least*, thirteen Osram Sylvania distributors targeted by PIC lawsuits, including in this and other districts (*See*, *e.g.*, Photographic Illustrators Corporation v. Optima Lighting, Inc., 13-cv-12797 (D. Mass); Photographic Illustrators Corporation v. Lampline Lighting, Inc., 13-cv-12857 (D. Mass.);

Photographic Illustrators Corporation v. Atlas Electric Supplies., 14-cv-10356 (D. Mass.); Photographic Illustrators Corporation v. Expresslightbulbs.com LLC, 14-cv-11945 (D. Mass.).

PIC filed this lawsuit against Interlight alleging that it misappropriated images owned by PIC, removing PIC's copyright designation and adding its own. Cmpl. at ¶¶ 22-24. The Complaint contains four counts: claims for violations of the Copyright Act (17 U.S.C. § 501), the Digital Millennium Copyright Act (17 U.S.C. § 1202), the Lanham Act (15 U.S.C. § 1125(a)), and Massachusetts' unfair and deceptive trade practices statute (Mass. Gen. L. ch. 93A).

For the reasons below, Count III of the Complaint should be dismissed.

II. PIC IS NOT ENTITLED TO RELIEF UNDER THE LANHAM ACT

The Supreme Court has held that copying of creative content like that alleged in this case is not protected by the "origin of work" provision of the Lanham Act, which covers only "the producer of the tangible goods that are offered for sale, and not . . . the author of any idea, concept, or communication embodied in those goods." *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37 (2003). Although the Supreme Court recognized that consumers of communicative products, such as books and films, might be concerned about the identity of the author of those works, it held that claims regarding the misdesignation of the authorship of such works did not fall within the purview of the Lanham Act. *Id.* at 33-35. Instead, these claims fall within the purview of copyright law. *Id*.

PIC claims that by allegedly "doctoring" Picone's photos, Interlight gave the misleading appearance that it is the creator and copyright owner of the PIC images, and as a result consumers are thus likely to be deceived as to the origin of the PIC images. Cmpl. at ¶ 464. It attempts to assert a Lanham Act claim for the alleged misuse/infringement of its copyrighted images but such rights are governed by the Copyright Act, as *Dastar* explains. The Lanham Act protects the origin of tangible goods and not creative works. *See Steele v. Turner Broad. Sys.*, 607 F. Supp. 2d 258, 263 (D. Mass. 2009) (Plaintiff's Lanham Act claim dismissed because he failed to assert that he is the producer of any tangible product distributed by the defendants).

III. CONCLUSION

For the foregoing reasons, Interlight respectfully requests that this Court enter an order dismissing Count III of the Complaint and for such further relief as it deems proper.

Respectfully submitted,

INTERNATIONAL LIGHTING CORP. D/B/A INTERLIGHT,

By its counsel,

Dated: February 5, 2015

/s/ Russell Pollock
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CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Defendant is being served on the date of electronic filing.

/s/ Russell Pollock
Russell Pollock